

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROGER DRAFT

Appeal 2006-3244
Application 10/785,636
Technology Center 3600

Decided: March 26, 2007

Before TERRY J. OWENS, MURRIEL E. CRAWFORD, and
JENNIFER D. BAHR, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Roger Draft (Appellant) appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1, 2, 6, and 8-13. Claims 14-17 are withdrawn from consideration, claims 3-5, and 7 stand objected to and claim

18 stands allowed (Answer 2). We have jurisdiction over this appeal under 35 U.S.C. § 6.

Appellant invented a cage for holding and transporting livestock (Specification [0004]). Claims 1 and 8 are representative of Appellant's invention and read as follows:

1. A cage for holding and transporting livestock comprising:

a frame that provides the general structure and shape of the cage, the frame defining at least one opening at one end of the cage and a cavity near the bottom of the cage;

at least one door sized to generally fit in the at least one opening, having a bottom portion and a top horizontal rod and adapted to prevent livestock from exiting the at least one opening when the door is in a closed position;

a member attached to the frame along which the top horizontal rod of the at least one door rides when the at least one door is opened; and

the cavity in the frame being adapted to receive the bottom portion of the at least one door when the door is in the closed position so that the at least one door will not open unintentionally.

8. A cage for holding and transporting livestock, comprising:

a frame that provides the general structure and shape of the cage, the frame defining at least one opening at one end of the cage;

at least one door adjacent the at least one opening and having a bottom; and

at least one cradle attached to the frame and adapted to receive the bottom of the at least one door to hold the door open when the bottom of the at least one door rests in the at least one cradle.

The Examiner relies upon the following as evidence of unpatentability:

Ziegler	US 2,220,436	Nov. 05, 1940
Ruggieri	US 4,365,590	Dec. 28, 1982

Appellant seeks review of the Examiner's rejections under 35 U.S.C. § 102(b) of claims 1, 6, and 8-13 as anticipated by Ruggieri and claims 1, 2, 6, and 8-13 as anticipated by Ziegler.

The Examiner provides reasoning in support of the rejections in the Answer (mailed May 22, 2006). Appellant presents opposing arguments in the Brief (filed April 21, 2006) and Reply Brief (filed July 27, 2006).

THE ISSUES

With respect to the rejection based on Ruggieri, Appellant contends Ruggieri does not show "a cavity, as recited in the claims of the present application" (Br. 15) and, more specifically, that Ruggieri lacks "the cavity in the frame being adapted to receive the bottom portion of the at least one door when the door is in the closed position so that the at least one door will not open unintentionally," as recited in claim 1 (Reply Br. 2). Appellant further contends that Ruggieri lacks a "cradle attached to the frame and adapted to receive the bottom of the at least one door," as called for in claims 6 and 8 (Br. 16, 17).

With respect to the rejection based on Ziegler, Appellant contends Ziegler does not disclose a "cage" as recited in claims 1 and 8 (Br. 18). Additionally, Appellant contends Ziegler lacks a top horizontal rod that rides along a member attached to the frame, as called for in claim 1 (Br. 18).

Accordingly, the issues before us are: (1) whether Ruggieri discloses a “cavity in the frame being adapted to receive the bottom portion of the at least one door when the door is in the closed position so that the at least one door will not open unintentionally,” as recited in claim 1, (2) whether Ruggieri discloses a “cradle attached to the frame and adapted to receive the bottom of the at least one door,” as called for in claims 6 and 8, (3) whether Ziegler discloses a “cage” as recited in claims 1 and 8, and (4) whether Ziegler discloses a door having a top horizontal rod that rides along a member attached to the frame, as called for in claim 1.

PRINCIPLES OF LAW

To establish anticipation, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001); *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

We determine the scope of the claims in patent applications “not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction ‘in light of the specification as it would be interpreted by one of ordinary skill in the art.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005) (en banc) (*quoting In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364, 70 USPQ2d 1827, 1830 (Fed. Cir. 2004)). We must be careful not to read a particular embodiment appearing in the written description into the claim if the claim language is broader than the embodiment. *See Superguide Corp.*

v. *DirecTV Enterprises, Inc.*, 358 F.3d 870, 875, 69 USPQ2d 1865, 1868-69 (Fed. Cir. 2004). The challenge is to interpret claims in view of the specification without unnecessarily importing limitations from the specification into the claims. *See E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003).

FINDINGS OF FACT

1. Appellant's channel 40, as best seen in Fig. 4, captures the bottom rod 20 of Appellant's door 12 and, in so doing, forms a cavity adapted to receive the bottom portion of the door when the door is in the closed position so that the door will not open unintentionally.
2. Appellant asserts Ruggieri's door 26 abuts partition wall 34 (Br. 15) and the Examiner does not dispute this assertion.
3. Each of Ruggieri's doors 26 may be locked in its closed position by a pair of captive locking screws 214 located adjacent the bottom corners of the door frame 172. Each screw is located to engage a threaded hole in the interior of the cage housing (Ruggieri, col. 11, ll. 9-15).
4. Ruggieri discloses no structure, other than the locking screws 214 and the threaded holes that receive the screws, near the bottom of the cage (or any compartment 32) that plays any part in preventing the doors from opening unintentionally.
5. When Ruggieri's door 26 is in its fully retracted or open position, the door is recessed at the top of the upper shelf compartment 32, with the front panel of the door frame 172 projecting from the front of the cage rack (Ruggieri, col. 10, ll. 7-12). The second door 26 from the top of the cage rack is apparently illustrated in the fully retracted position in Fig. 1.

6. The inclined ramps 190, 192, formed at the front end of Ruggieri's guide tracks 176, are disposed within the cage rack (Ruggieri, col. 9, l. 38 to col. 10, l. 25; Fig. 3). Ruggieri discloses no structure attached to the frame near the top of the door opening and disposed forwardly and externally of the cage rack for receiving the protruding bottom of the door.

7. Ziegler describes an adjustable bulkhead or partition arrangement for railroad cars, trucks, ship compartments, and the like (Ziegler 1, col. 1, ll. 1-3). Ziegler provides a partition or bulkhead 30 having a pair of stub axles 38 each carrying a wheel 39 extending therefrom. The wheels 39 are positioned to engage the track surface of Z shaped tracks 24 when the partition or bulkhead 30 is tilted for movement from one position to another, as illustrated in dotted lines in Fig. 5. The partition or bulkhead 30 also has a pair of pins 35 extending from opposite sides thereof. The pins 35 are seatable in notches 27 in Z shaped track 24 when the partition or bulkhead is placed in a vertical orientation in the selected position, as illustrated in solid lines in Fig. 5 (Ziegler 1, col. 2, l. 37 to 2, col. 1, l. 27).

8. Ziegler provides an access door 68 in the partition or bulkhead 30 to permit access to the enclosed compartment without disturbing the partition (Ziegler 2, col. 2, ll. 16-36).

9. Ziegler teaches that a freight car is one application of the adjustable partition arrangement (Ziegler 2, col. 1, l. 28). To facilitate loading or unloading, the partition may be withdrawn, tilted and elevated and held in the elevated position (Ziegler 2, col. 1, ll. 33-35).

10. Ziegler does not disclose use of the adjustable partition arrangement in a compartment for holding and transporting livestock or disclose any structure for letting in air and light.

11. Citing *The American Heritage Dictionary* 227 (2nd Coll. Ed. Houghton-Mifflin Co. 1985), Appellant argues the term “cage” is defined as “a structure for confining birds or animals enclosed on at least one side by a grating of wires or bars in order to let in air and light” (Br. 18).
12. Appellant describes the “cage” of the invention as including two doors 12 made of metal wire mesh and a wire mesh grate 32 enclosing one section of one side of the cage (Specification [0020] – [0021]).
13. Citing *Wordnet® 2.1* (2003) at <http://wordnet.princeton.edu/perl/webwn9/19/06>, the Examiner interprets the term “cage” as “something that restricts freedom as a cage restricts freedom” (Answer 7).
14. *Webster’s New World Dictionary* 196 (Simon & Schuster Inc. 1988) defines “cage” as “a box or enclosed structure made of wires, bars, etc., for confining birds or animals.”

ANALYSIS

We turn first to the issue of whether Ruggieri discloses a cavity near the bottom of the frame adapted to receive the bottom portion of the door when the door is in the closed position so that the door will not open unintentionally, as recited in claim 1. Even assuming the Examiner is correct that Ruggieri’s door in the closed position is flush with the sidewall of the cage rack (Answer 3) so as to effectively be received in a cavity, that is, a recessed area within the cage rack frame, such cavity, unlike Appellant’s channel 40 (Finding of Fact 1), is not “adapted to receive the bottom portion of the at least one door when the door is in the closed position so that the at least one door will not open unintentionally,” as

recited in claim 1. Rather, locking screws are required to lock the door into the closed position (Finding of Fact 4).

We therefore conclude that Ruggieri lacks a “cavity in the frame being adapted to receive the bottom portion of the at least one door when the door is in the closed position so that the at least one door will not open unintentionally,” as called for in claim 1. The rejection of claim 1, and claim 6 depending from claim 1, is reversed.

Ruggieri lacks a “cradle attached to the frame and adapted to receive the bottom of the at least one door to hold the door open when the bottom of the at least one door rests in the at least one cradle,” as recited in independent claim 8. The bottom of Ruggieri’s door 26 projects outwardly from the front of the cage rack and, thus, is not received by any portion of guide tracks 176, or any other structure, when Ruggieri’s door 26 is in the open position (Findings of Fact 5 and 6). The rejection of claim 8, and claims 9-13 depending from claim 8, is reversed.

Given the description of Appellant’s cage in the Specification (Finding of Fact 12), the recited use of the cage “for holding and transporting livestock” in the preambles of claims 1 and 8, the prevalence of the reference to wire mesh, bars, or other structure for letting in air and light in common dictionary definitions of “cage” (Findings of Fact 11 and 14), and the evident requirement of some sort of ventilation structure for letting at least air into a cage for holding and transporting livestock, we conclude that one of ordinary skill in the art would interpret “cage” in Appellant’s claims as an enclosure for confining birds or animals, the enclosure including a mesh, grating or other structure for letting in air and light. Ziegler discloses no such structure and does not describe use of the

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adjustable partition arrangement for holding and transferring birds or animals (Finding of Fact 10). Ziegler thus does not disclose a “cage” as called for in Appellant’s claims 1 and 8. Accordingly, the rejection of claims 1 and 8, and claims 2, 6, and 9-13 depending from claims 1 and 8, is reversed. We therefore need not reach the fourth issue raised by Appellant, namely, whether Ziegler discloses a door having a top horizontal rod that rides along a member attached to the frame, as called for in claim 1.

SUMMARY

The decision of the Examiner is reversed.

REVERSED

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